IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
ORDER

S.B. Civil Writ Petition No.3421/99
Rajaram Kandoi
Vs.
Divisional Commissioner & Ors.

Date of Order :: 23rd July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri P.S. Sharma, Advocate for petitioner.
Shri S.N. Gupta, Deputy Government Advocate.

REPORTABLE

The petitioner has challenged the order dated 22.3.1999 passed by the Additional Divisional Commissioner, Jaipur whereby his revision petition was only partly accepted with the direction that after 15.12.97 the disputed land and building were partitioned between the petitioner Rajaram Kandoi and his brother

Naresh Kumar Kandoi as per the decree of the Civil Court, therefore, the same should be considered as separate units for the purpose of assessment of the land and building tax. The petitioner has also challenged the order passed by the appellate authority dated 21.3.1998 and the order passed by the Assessing Authority dated 22.3.1996 whereby the aforesaid two units for the purpose of assessment were treated as one unit.

I have heard Shri P.S. Sharma, the learned counsel for the petitioner and Shri S.N. Gupta, the learned Deputy Government Advocate.

Shri P.S. Sharma argued that the petitioner had purchased the land jointly with his brother paying for half share by registered sale deed on 8.4.1991. A

family settlement was arrived at between the petitioner and his brother and the said land and building were partitioned between the petitioner and his brother which was duly attested by Notary Public on 4.7.1992. A civil suit was also filed to get the aforesaid partition sanctified which eventually was decreed by the Court on 15.12.1997. Learned counsel argued that since there are two separate units, they ought to be treated as two, but the learned authorities below have committed an error of law in treating these units as one for the purpose of assessment. He argued that half of the value of the property can be accepted as the valuation of one unit owned and possessed by the petitioner. Assessment has to be made on the basis of maximum value and in doing

so the Assessing Authority has to give due weightage to the valuation report of the registered valuer. According to the report of the valuer submitted by the petitioner, valuation of the building as on 1.4.1992 was only Rs.10,54,600/- whereas the Assessing Authority has assessed its value to the tune of Rs.24,98,800/- as on 1.4.95 which is excessive and unreal, given the fact that the Assessing Authority for the previous block of two yeas had assessed the value of the same property at Rs.5,10,700/- as on 1.4.1992. The appellate authority did not apply its mind to all these arguments and disposed of the appeal by perfunctory and non speaking order. The Revisional Authority also without entering into all these aspects, merely based its order on

the pre received report without deciding the plea of the petitioner to assess the two units separately. Shri P.S. Sharma in support of his arguments relied on the judgments of this Court in Smt. Shanta Gupta & Anr. Vs. State of Raj. & Ors., S.B. Civil Writ Petition No.757/1993 decided on 8.7.1993 and State & Anr. Vs. Narendra Kumar Kaushik & Ors., S.B. Civil Writ Petition No.4134/92 decided on 23.8.1993.

On the other hand, Shri S.N. Gupta, the learned Deputy Government Advocate has opposed the writ petition and argued that none of the orders passed by the authorities below suffer from any error apparent on the face of the record. He argued that there was a common dispute whether property is purchased by the

petitioner and his brother. In fact they submitted joint valuation report of the property showing the construction to have been completed in March, 1994. Subsequently, the petitioner by letter dated 12.10.1994 informed the department that construction of the building was still not complete. The petitioner and his brother have rightly been taxed on their property. The Assessing Authority has assessed the value of the property at Rs.24,98,800/- as on 1.4.1995 and that order is perfectly legal and valid. He therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record. While the

department claims that the property in dispute which is owned by petitioner and his brother is one single unit and therefore is liable to be assessed accordingly, but the petitioner's contention is that there was a sale deed duly attested by the notary public according to which the plot in the size of 90 feet x 50 feet having construction was divided into two parts. The petitioner filed a civil suit for a decree of partition before the Civil Court sometime in the year 1997 and the same was decreed on 15.12.1997 on the basis of compromise. This fact has also been acknowledged and recognized by the learned Divisional Commissioner who has by the impugned order allowed two separate units though w.e.f. the date of

decree of the Civil Court dated 15.12.1997. In Smt. Shanta Gupta, supra, the learned Single Judge in the context of a property jointly purchased by husband and wife held that mere one factum of purchase would not give rise to the conclusion that one of the two owners would be entitled to receive rent for the entire property. It was held that if the assessee was able to satisfy that he was not owner in respect of particular unit which property is in the hands of other person, the assessee was not liable to assessment for the entire property. The learned Single Judged in the aforesaid judgment relied on the division bench judgment of this Court in Rajputana Hotels Pvt. Ltd. Vs. State of Raj., D.B. Civil Writ Petition No.511/1989 decided

on 27.5.1992. The division bench in the aforesaid judgment held as under:-

> “From the inclusive definition of ownership, the criteria is not the registered ownership of a unit of land or building alone. The focus of the sections is entitlement to receive rent. Even those persons who are entitled to receive rent had been considered to be owner and therefore, if the petitioner is able to satisfy the assessing authority that he is not the owner in respect of a particular unit constructed and sold (whether by way of registered or unregistered deed of conveyance and those persons were entitled to receive the rent if the property is let out, then the property is assessable in the hands of such persons and not in the hands of the petitioner.”

In another judgment co-ordinate bench of

this Court in State & Anr. Vs. Narendra Kumar Kaushik & Ors., supra, held that when the property was divided amongst three brothers on the basis of family settlement and they have separate possession and ownership over their portion as the character of the building is one and each separate unit has become one separate unit, it does not become one unit simply because it has been given on rent by one person.

In the facts of the present case I find that when the factum of partition on the basis of family settlement arrived at on 4.7.1992 which has been sanctified by decree of the court dated 15.12.1997, has been acknowledged by the revisional authority when it directed that the petitioner would be liable to be assessed

only in respect of one of the two units at least from the date of decree of the Court, there is no reason not to treat the subject property as two separate units w.e.f. the date of family settlement.

In view of the above discussion, the writ petition deserves to be allowed and is accordingly allowed. The impugned orders are set aside and the petitioners are liable to be assessed in respect of the land and building as two units w.e.f. the date of family settlement and the revised assessment orders would be accordingly passed. There shall be no order as to costs.

(Mohammad Rafiq),J.

RS/-